

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHELLY J GARBES**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 21A-UI-02000-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/29/19  
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On December 28, 2020, the employer filed an appeal from the December 17, 2020, (reference 02) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 25, 2021. Claimant did not register for the hearing and did not participate. Employer participated store manager Ben Smeenck. Official notice was taken of the administrative record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Is the claimant able to and available for work?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?  
Was the claimant overpaid Lost Wage Assistance?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 4, 2020. Claimant last worked as a part-time sales associate.

In mid-August 2020, claimant injured her back at work. Claimant filed a claim for workers' compensation benefits. At the end of August 2020, claimant requested a leave of absence. The request was approved, and claimant's last day of work was September 5, 2020.

Claimant has not returned to employer and requested to return to work.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$888.00, since filing a claim with an effective date of December 27, 2020, for the eight weeks ending February 20, 2021. The administrative record also establishes that the employer did not participate in the fact-finding interview.

Claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$2,400.00 for the eight weeks ending February 20, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

In this case, the claimant has not been separated from employment, but has not established she is able to and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Here, claimant requested a leave of absence. Although employer concedes claimant had a work injury, it is the claimant's burden to establish she is able to work. Claimant did not appear for the hearing and testify about whether she is able to work with or without restrictions, whether she is receiving workers' compensation benefits, or why she has not returned to work. Claimant failed to establish she is able to work. The only information is that she requested a leave of absence and continues to be on a leave of absence. Therefore, her unemployment is deemed voluntary and she is not eligible for benefits.

The next issue is whether claimant has been overpaid benefits.

The administrative law judge concludes claimant has been overpaid benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits in the amount of \$888.00 because she was ineligible to receive regular unemployment insurance benefits.

Even though employer did not participate in the fact finding interview, this overpayment cannot be waived because this is a modification—not a reversal—of a separation decision. See Iowa Code 96.3(7)(b)(1)(b).

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, she also received an additional \$2,400.00 in FPUC benefits for the eight week period ending February 20, 2021. Claimant is required to repay those benefits.

**DECISION:**

The December 17, 2020, (reference 02) unemployment insurance decision is modified in favor of employer. Claimant is not able to and available for work effective December 27, 2020. Claimant is ineligible for benefits until such date as she is available for work and employer does not have work available for her. The claimant has been overpaid unemployment insurance benefits in the amount of \$888.00 and FPUC benefits in the amount of \$2,400.00. Claimant must repay those benefits.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

March 5, 2021  
Decision Dated and Mailed

cal/lj

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.